IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1062 OF 2005

Smt. Vrushali Mahesh Gujar .. Petitioner

V/s

Mahesh V. Gujar .. Respondent

Mr.A.A. Garge for the Petitioner.

None for the Respondent.

CORAM : D.G. KARNIK, J.

DATE : 24TH APRIL 2007

P.C. :

1. Heard the learned counsel for the Petitioner. None present for the Respondent.

2. This Court by an order dated 27th June 2005 directed issuance of a notice to the Respondent indicating that the writ petition would be disposed of finally at the stage of admission itself. Despite service of notice, the Respondent has not appeared and hence this writ petition is taken up for hearing as per the notice issued by the Court.

3. By this petition, the Petitioner challenges the order dated 12th October 2004 passed by the Civil Judge,

Senior Division, Pune rejecting the application of the Petitioner contending that the Marriage Petition No.309 of 2003 filed against her by the Petitioner was not maintainable on the ground that the marriage petition was filed within one year of the marriage, without leave of the court.

4. The marriage between the Petitioner and the Respondent was solemnised on 21st November 2002. The Respondent filed a petition for dissolution of the marriage against the Petitioner in the Court of Civil Judge, Senior Division at Pune on 15th September 2003, i.e. within one year of the marriage. The Petitioner therefore made an application be dismissed as the same was presented within one year of the marriage without leave of the Court. By the impugned order, the Petitioner's application was dismissed.

5. Section 14 of the Hindu Marriage Act, 1955 (for short "the Act") reads as follows:-

> **"14. No petition for divorce to be presented within one year of marriage**.- (1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a

marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage.

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said one year upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

> (2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year."

6. Sub-section (1) of Section 14 of the Act provides that it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce unless at the date of presentation of the petition one year has elapsed since the date of the marriage. Proviso to sub-section (1) of section 14 provides that in accordance with the rules that may be made by the High Court in that regard, the court may allow a petition to be presented before one year of the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent.

7. Thus, excepting a case covered by proviso to sub-section (1) of section 14 of the Act, a person is not entitled to file a petition for dissolution of a

marriage by a decree of divorce within one year of the marriage. In the present case, admittedly, the marriage petition has been filed within one year. The Petitioner's application for dismissal of the marriage petition on that ground, however, was rejected by the court below by a three sentences order, which reads thus:-

> "Read application and say on it vide Exh.17. Already one year has elapsed since the date of the marriage. Hence, filed."

The trial court did not consider the objection of the Petitioner that the marriage petition filed within one year of the marriage could not be entertained within one year of the marriage. It is true that there is a difference between the expression "entertain a petition" and "present/file a petition". Moreover, section 14 of the Act prohibits a court from entering a petition which has been presented within one year of the marriage. Admittedly, in the present case, the petition was presented within one year of the marriage. The court, therefore, could not have entertained the petition which was presented within one year of the marriage even after expiry of the period of one year unless the case fell under proviso to sub-section (1) of section 14 of the

Act.

8. As the learned Judge has not at all considered whether the marriage petition was covered by proviso to sub-section (1) of section 14 of the Act, the impugned order will have to be set aside and the matter will have to be remanded back to the trial court for consideration afresh. This is because the court has simply rejected the application of the Petitioner on the ground that one year had since elapsed and, therefore, the petition could be entertained.

9. In the circumstances, the impugned order is set aside and the matter is remanded back to the trial court for consideration afresh whether the case falls under proviso to sub-section (1) of section 14 of the Hindu Marriage Act, 1955 and whether the court could entertain the petition in view of proviso to sub-section (1) of section 14 of the Act.

10. No costs.

(D.G. KARNIK, J.)